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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/727,901	12/01/2000	Michael J. Recchia JR.	652 P 006	3682

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EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 03/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

128

Office Action Summary

Application No.

09/727,901

Applicant(s)

RECCHIA, MICHAEL J.

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 16-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on January 2, 2003 has been entered.

2. Claims 1-20 remain pending. Claims 16-20 were withdrawn from further consideration in Paper No. 8.

3. The rejections of claims 1-15 under 35 U.S.C. 112, 35 U.S.C. 102(b), 35 U.S.C. 103(a), and Double Patenting made in Paper No. 8 have been withdrawn.

Election/Restrictions

4. Applicant's elected claims 1-15 with traverse in Paper No. 8. The traversal is on the ground(s) that claims 16-18 and 20 are now sufficiently close together and recite similar structures, in light of the amendment filed January 2, 2003. However, amended claims 16-18, and 20 are still directed to an invention that is independent or distinct from the invention originally elected in Paper No. 8 for the following reasons:

- (1) The invention of claim 16-18, 20 is a completely sealed bag requiring *both* thermoplastic sheets to be sealed to the mesh sheet at each end.

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The invention of claims 1-15 requires *only 1* thermoplastic sheet be sealed to the mesh sheet.

(2) The invention of claim 16-18, 20 *does not* have a folded thermoplastic sheet at either of the bag *such that* one thermoplastic sheet is sealed to *both sides* of the mesh sheet.

5. Applicant has received an action on the merits for the originally elected invention; this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 16-18, and 20 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamagata (JP411130089A) in view of Yamagata (JP11-292088)

8. Regarding claims 1-4, Yamagata '089 teaches a bag comprising a first thermoplastic sheet (item 2 in drawings), a mesh sheet (item 3), and a second thermoplastic sheet (synthetic resin tape item 11) wherein the first and mesh sheets are sealed at the edges (item 5a). Yamagata '089 teaches a first seal line at 5c (Figures 5A and 5B), which is close to the first end of the mesh sheet and

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first end of the first thermoplastic sheet as recited in claim 2, and the first sheet folding over the mesh sheet (items 2/10 fold over item 3 in Figure 5B).

Yamagata '089 also teaches a second seal (item 12a of item 11 in Figure 5A) which is between a second sheet (item 11) and the mesh sheet (item 3).

Yamagata '089 further teaches a third seal, as recited in claims 3 and 4, is formed when the bag is closed between the first sheet (item 2) and second thermoplastic sheet (item 11) (i.e. at the 9/11 interface), which is spaced from the mesh sheet (item 3). Yamagata '089 also teaches first sheet (item 2/8/9) extends beyond the mesh sheet ((See Figures 3, 5A, and 5B, English Translation Paragraphs 0010-0030.) However, Yamagata '089 is silent in teaching the first *and* second sheet extend beyond the mesh *together* as recited in claim 1.

9. Yamagata '088 teaches an alternative location of a second sheet used to provide a means for securing a closure of a bag comprising a mesh sheet (i.e. item 13 secures the folded portion of the bag in Figure 1) wherein the means for securing the closure extends *beyond the bag* (Figure 1 A & B)

10. Therefore, it would have been obvious to modify first and second sheet extend beyond the mesh *together* since one would have been substituting one means for securing a fold to close a bag comprising a mesh sheet for another.

11. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamagata (JP411130089A) in view of Yamagata (JP11-292088) as applied to as applied to claims 1-4 above, further in view of Shigeta et al. (JP 407315391A).

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12. Yamagata '089 teaches produce, but is silent in teaching onions.

However, Shigeta et al. are relied on as evidence of the conventionality of these produce bags comprising a mesh and thermoplastic sheet containing onions (See English Abstract, English Detailed Description Paragraphs 0008-0009).

Therefore, it would have been obvious to include onions in the bag of Yamagata '089 since one would have been substituting one known produce for another in a bag comprising a mesh sheet and a thermoplastic sheet.

13. Claim 6-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamagata (JP411130089A) in view of Yamagata (JP11-292088), as applied to as applied to claims 1-4 above, further in view of Meister (US 3024962) and Yamagata (JP 2000-318743)

14. Regarding claims 6 and 9, Yamagata '089 teaches a header is formed by the first seal, but is silent in teaching a third thermoplastic sheet joined to the first sheet and mesh sheet by the first seal line and inside of the mesh sheet.

15. With respect to providing a third sheet, joined to the first sheet and mesh sheet by the first seal line inside of the mesh sheet, Meister is relied on as evidence of the conventionality of adding a third sheet to a header portion of a bag. Meister also teaches forming headers for bags with a stiffening member like item 30 Yamagata '089. However Meister teaches an additional sheet (item 29) wrapped around the stiffening member to provide indicia that is sealed the interior of the bag walls. Meister teaches the sheet is paper, but may contain a coating that is heat sealable (Figures 11 and 16, Column 4, lines 35-71, Column

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5, lines 28-36). Therefore it would have been obvious to provide a third sheet joined to the first sheet and mesh sheet by the first seal line inside of the mesh sheet since it was known to provide a third sheet to cover the stiffening member of a header to provide indicia and one would have been substituting one type of header design for another.

16. With respect to providing a thermoplastic third sheet, it was well known to provide supplemental thermoplastic sheets in a header with indicia (English Translation Paragraph 0005). Therefore it would have been further obvious to provide a third sheet that is thermoplastic since one would have been substituting one type of printed header insert for another.

17. Regarding claims 7 and 10, Yamagata '089 teaches the first sheet is outside of the mesh sheet at the first seal line (See Figure 5B).

18. Regarding claims 8 and 11, Yamagata '089 is silent in teaching a third sheet is smaller than the first. Meister teaches a third sheet used for indicia wraps around the stiffening member of the header and is smaller than the first (Figures 11 and 16). Therefore, it would have been obvious to provide a third sheet that is smaller than the first, since it is only needed to provide indicia for the header area.

19. Regarding claim 12, Yamagata '089 teaches the first transverse seal is close to the first end of the first sheet and mesh sheet (Figure 5B).

20. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamagata (JP411130089A) in view of Yamagata (JP11-292088), further in view

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of Meister (US 3024962) and Yamagata (JP 2000-318743) as applied to claims 6-12 above, further in view of Fox et al (US 6024489) and Cammack (US 5741076).

21. Yamagata '089 teaches the mesh lines are diagonal, but are silent in teaching strands perpendicular and parallel to the edges, Fox et al. and Cammack (See Abstracts and Figures in both) are each relied on as further evidence of the conventional produce bag design comprising a mesh sheet wherein strands are perpendicular and parallel to the edge seals. Therefore it would have been obvious to modify Yamagata '089 and include parallel and perpendicular seal since one would have been substituting one known produce bag mesh sheet orientation for another for the same purpose.

22. Claim 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamagata (JP411130089A) in view of Yamagata (JP11-292088), as applied to claim 1 above, further in view of Fox et al (US 6024489) and Cammack (US 5741076).

23. Yamagata '089 teaches the mesh lines are diagonal, but are silent in teaching strands perpendicular and parallel to the edges, Fox et al. and Cammack (See Abstracts and Figures in both) are each relied on as further evidence of the conventional produce bag design comprising a mesh sheet wherein strands are perpendicular and parallel to the edge seals. Therefore it would have been obvious to modify Yamagata '089 and include parallel and

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perpendicular seal since one would have been substituting one known produce bag mesh sheet orientation for another for the same purpose.

24. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamagata (JP411130089A) in view of Yamagata (JP11-292088), as applied to claim 1 above, further in view of Welles (US 4099666).

25. Yamagata '089 teaches closing and opening one end of the bag by a seal tape, but is silent in teaching bunching the bag. However, it was well known to provide an opening for the bag at the header end. Welles also teaches a bag comprising an end for hanging the bag and an end comprising one sheet folded over another sheet. Welles is relied on as evidence of the conventionality of providing a bunching member at the header end of a food-containing bag.

Welles teaches the wicket holes are used for holding the bag while filling and the bunching member is used for sealing (Figure 5, Column 4, line 53 to Column 5, line 17). Therefore, it would have been obvious to include a bunching member in the neck of the bag of Yamagata '089 since this would provide a means for opening and closing the bag and one would have been substituting one means for accessing a bag for another for the same bag design: a food bag comprising an end for hanging the bag and an end comprising one sheet folded over another sheet.

Response to Arguments

26. Applicant's arguments filed January 2, 2003 have been fully considered but they are not persuasive.

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
27. Applicant's arguments are directed to failing of Yamagata '089 to show certain features of applicant's invention. However, it is noted that the features upon which applicant relies (i.e., forming the bag on a conventional rollstock equipment) are not recited in the rejected claim(s). The claims are article claims directed to a bag *structure*, and as such do not require using particular method of forming or a particular apparatus. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

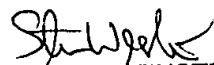
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist at (703) 308-0061.

Robert Madsen 
Examiner
Art Unit 1761
March 3, 2003


STEVE WEINSTEIN
PRIMARY EXAMINER
For M. Cano